

IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY,  
MARYLAND

PETITION OF LAURIE ZIVETZ, *et al.*

FOR JUDICIAL REVIEW OF THE DECISION  
COMMISSION ON LANDLORD-TENANT  
AFFAIRS FOR MONTGOMERY COUNTY

Civil No. 247313

IN COMMISSION CASE NO. 24699  
TANYA JOHNSON, *et al.* v. LAURIE ZIVETS, *et al.*

OPINION AND ORDER

This case comes to the undersigned on appeal from the decision of the Montgomery County Commission on Landlord-Tenant Affairs ("Commission") awarding \$3,125.00 to the Respondent.

**FACTS**

Petitioners Mark A. Mlawer and Laurie Zivetz are the owners of a licensed condominium rental unit, and the Respondent Tanya Johnson was at one time interested in leasing the Petitioners' property. In the summer of 2002, the Respondent entered into negotiations with the Petitioners to lease the condominium. The Respondent paid the Petitioners a security deposit and one month's rent in connection with her intention to enter into a lease. Despite these actions, the Respondent never entered into a lease with the Petitioners.

On September 30, 2002, the Respondent filed a formal complaint with the Commission claiming that the Petitioners wrongfully withheld the security deposit and first month's rent after the Respondent informed them of her intention not to lease the condominium.

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Clerk of the Circuit Court  
Montgomery County, Md.

## THE COMMISSION'S DECISION

The Commission held a hearing on July 7, 2003 and then issued a Decision and Order on October 8, 2003. In its decision, the Commission first found that no lease was ever entered into by the parties, and therefore no tenancy was created. Thus, the Respondent was not obligated to pay any rent at all and the Petitioners were required to return the first month's rent. Second, the Commission found that the only portion of the security deposit that could be retained by the Petitioners pursuant to the Rental Application was \$20.00, which represented the amount actually expended as a result of the application. The Commission ordered that the Petitioners were required to return the remainder of the security deposit to the Respondent.

## DISCUSSION

In their memorandum, the Petitioners argue that the Decision of the Commission should be vacated because the Commission did not have jurisdiction over the Respondent's complaint. The Petitioners assert that the Respondent was not an affected tenant or prospective tenant under the Code, and therefore was not entitled to file a complaint with the Commission. It is the opinion of this Court that the Petitioners' argument is correct.

The Commission has the power to enforce the provisions outlined in Chapter 29 of the Montgomery County Code. Section 29-36 of the Code specifies the types of tenant complaints that may be filed. Under Section 29-36(a), an affected tenant is expressly permitted to file a complaint for a defective tenancy. Under Section 29-36(b), a prospective tenant is expressly permitted to file a complaint for violations of Sections 29-27 and 29-28, which govern the contents of a lease and leasing requirements generally.

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Here, the Respondent is not an affected tenant as defined in Section 29-1, and therefore cannot file a complaint for defective tenancy pursuant to Section 29-36(a). The Respondent is a prospective tenant, and as prospective tenant, she may file a complaint for violations of leasing requirements pursuant to Section 29-36(b). The Respondent, however, did not file a complaint for violations of these provisions.

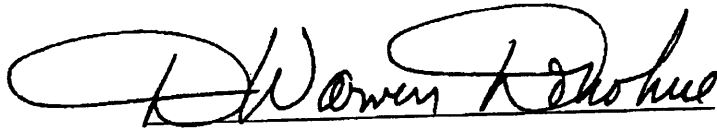
The Commission is a creature of statute, and it only has those powers given to it by the statute. There is no provision in Chapter 29 of the Montgomery County Code that permits the Commission to take action based upon the facts alleged in the complaint filed below, and therefore the Commission has no authority in this case to act. Therefore, the Decision and Order of the Commission is a nullity and must be vacated. The parties are free to pursue any remedies they may be entitled to in the courts.

It is therefore this 13<sup>th</sup> day of July, 2004

ORDERED that the Decision and Order of the Commission in Case No. 24699, dated October 8, 2003, be and it is hereby VACATED.

ENTERED

JUL 15 2004  
Clerk of the Circuit Court  
Montgomery County, Md.



D. WARREN DONOHUE, Judge  
Circuit Court for Montgomery County, Maryland